

STATE OF NORTH DAKOTA
BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF:)
)
North Dakota State Board of Medical)
Examiners-Investigative Panel B,)
Complainant,)
-vs-)
John D. Huff, M.D.)
Respondent.)

**RECOMMENDED
FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER**

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On October 9, 2002, a Complaint was filed with the North Dakota State Board of Medical Examiners ("Board") by John M. Olson, special assistant attorney general, counsel for the Board's Investigative Panel B, requesting revocation of the license to practice medicine in North Dakota of John D. Huff, M.D., Respondent ("Huff"). The Complaint cites as grounds for revocation, or other appropriate administrative action, actions or conduct in violation of N.D.C.C. § 43-17-31 (15) and (16), specifically that Huff engaged in the performance of dishonorable, unethical, or unprofessional conduct likely to deceive, defraud or harm the public, and/or engaged in gross negligence in the practice of medicine by actions or conduct in regard to an eye examination of a patient for a trucker's license. Huff filed his Answer through his attorney, Ralph A. Vinje, Bismarck, on August 25, 2003.

On April 17, 2003, the Board requested the designation of an administrative law judge (ALJ) from the Office of Administrative Hearings to conduct a hearing and to issue

recommended findings of fact and conclusions of law, as well as a recommended order, in regard to the Complaint. On April 22, 2003, the undersigned ALJ was designated.

On April 24, 2003, the ALJ issued a Notice of Prehearing Conference. A prehearing conference was held as rescheduled on June 5, 2003. As a result of that conference, a hearing date was scheduled. The ALJ issued a Notice of Hearing on June 5, 2003, scheduling an August 26, 2003, hearing. The hearing was held as scheduled on August 26, in the Office of Administrative Hearings, Bismarck, North Dakota. Investigative Panel B was represented by Mr. Olson. Huff was present at the hearing. He was represented at the hearing by Mr. Vinje. Five witnesses testified at the hearing, including Huff and the patient. No expert witness testified for Investigative Panel B. Eight exhibits were offered and admitted. See attached Exhibit List.

At the close of the hearing the ALJ heard oral argument from counsel.

Based on the evidence presented at the hearing and the oral argument of counsel, the administrative law judge makes the following recommended findings of fact and conclusions of law.

FINDINGS OF FACT

1. Huff is currently a physician licensed to practice medicine in North Dakota. His license number is 2571. His license is valid through December 31, 2003. Huff is also licensed to practice in Montana and Texas. Huff is certified as an ophthalmologist.

2. Huff is not currently practicing medicine but is enrolled in a PhD. program at the Maharishi University of Management in Fairfield, Iowa. Huff is beginning his third year in the PhD. program. His studies are in the area of research of ayurvedic approaches in the

management of eye conditions, focusing on wellness through natural processes or approaches to correcting imbalances in the patients neuropsychic physiology.

3. Prior to Huff's enrollment in the PhD. program he had been recruited by Trinity Regional Eyecare - Williston Basin ("TRE") to join their Williston staff. Huff came to Williston with a theory of medical practice of using minimal invasive procedures unless more invasive procedures proved necessary, after attempting vitamin, nutritional, holistic procedures. Yet, Huff said that he will use and has used the latest in technology for his patients, if necessary. However, he said he prefers to use non-surgical approaches, if possible. He said that when he was hired by TRE he was assured that his theory of medical practice was in keeping with medical practices and procedures at TRE, or at least his theory was understood and accepted by TRE.

4. Huff said he later found that his theory of medical practice was not accepted at TRE, and at least one other doctor at TRE expressed to Huff his disapproval of Huff's theory. Huff also said that some of the nurses preferred the surgical technique over his more holistic approach. He said that some of the patients were so far along when he got there that he continued with their progress toward surgical procedures. However, he said that some of his patients who were not scheduled for surgery were shifted by nurses to another doctor's surgical schedule without consulting him. He said that the nurses testifying against him at the hearing were involved in this. In effect, Huff said that nurses, especially nurse Marlene Johnson, disregarded his orders and Huff brought this to their attention and the attention of administration. Huff also brought to the nurses' attention that he believed that they were making chart entries that did not contain all necessary, pertinent information.

5. Although Huff had a one year contract with TRE and was on the TRE payroll for one year, he only practiced at the TRE clinic for two months.

6. Huff and other staff at TRE had disagreements over a number of things besides scheduling Huff's patients for surgery and chart entries. At a meeting with the TRE clinic administrator and assistant administrator in January 2001, administration suspended Huff, and he left the TRE clinic that day, pending a chart review of his patients.

7. In July 2001, after an independent review of Huff's patient's charts, TRE removed Huff's suspension but bought out his contract.

8. Huff moved to Fairfield Iowa after being suspended by TRE.

9. Huff has not had his license suspended or revoked in any state.

10. Administrative proceedings are currently pending against Huff in Texas. Huff is contesting the action which is in regard to the care Huff rendered to patients in Texas in 2000.

11. Huff has used the Ishihara Test ("I-test"), which is commonly used by ophthalmologists to evaluate a patient's color perception.

12. The I-test is a test designed for color-blindness that is inherited, *i.e.*, for congenital color-blindness, not for acquired color-blindness. See exhibits 2A and 2B. A person can have complete or partial congenital color-blindness.

13. Huff said the typical protocol for giving the I-test is to first give a complete eye exam to the patient and then to give the I-test if there is a concern about color vision.

14. Huff said further the appropriate protocol for giving the I-test for someone with congenital color-blindness is to give the book of plates (exhibit 2B) to the patient, give the patient some instructions, and give them three seconds to identify the plates. The patient responses are tallied and evaluated according to the explanation of the plates given to those conducting the test. See explanation in exhibits 2A and 2B.

15. The I-test can also be used to evaluate someone with acquired color blindness. Huff said that when giving it to someone with this condition the key is to give them more time

with each chart and to coach them. He said that in this circumstance the patient is allowed to trace the figures with a brush or a finger. He said when giving the I-test there needs to be adequate lighting.

16. Huff said that the purpose of the evaluation for someone with acquired color blindness is usually to evaluate them for loss of color vision caused by a toxic substance. The goal is to identify the degree to which a toxic substance has effected color vision. This situation is variable, he said, unlike congenital, where it is a very definite amount of loss.

17. Huff said that someone with congenital color blindness will have vision of 20/200 or less. He said it is quite obvious that someone with 20/20 and 20/25 vision does not have congenital color-blindness. See exhibit 8, pg 303 from Pediatric Ophthalmology states the additional findings that characterize congenital color blindness.

18. On December 14, 2000, Huff examined Shawn Anderson for the first and only time. Huff first picked up Anderson's chart and realized he was there for a trucking physical. Exhibit 1, Anderson's chart. Huff noticed that Anderson had 20/20 and 20/25 vision.

19. When he first read Anderson's chart, Huff had the information above the red line on exhibit 1. LPN Winter wrote everything above the red line when she saw Anderson, initially, for his examination. Huff said that Winter took an incomplete history of Anderson.

20. Huff said that Winter had already dilated the patient without his approval thus preventing him from evaluating the patient pre-dilation and conducting certain tests and procedures on his own, including the ability to do an I-test without dilation.

21. Huff said that once the patient is dilated he can not focus his eyes so that the ability to do the I-test is reduced. However, Huff said that there is no rigid protocol for doing the I-test for someone who has acquired color blindness. Although Huff said that it is not his practice to give the I-test to someone who is dilated, he said that he had to do it in this case because the

nurse had preempted his evaluation by dilation without his approval and Anderson needed the examination for a trucking license. He said that his normal practice is for the nurse not to dilate the patient until he gives approval. He said that Anderson is the only patient he has given an I-test to who has been dilated just prior to the test. He said that the I-test was somewhat compromised by Anderson's pupils being dilated and he had to pay a lot more attention to Anderson doing the test, taking more time with him, in order to get a valid result. Huff said that he believed he needed to answer a question posed by the nurse's results in giving the I-test, and that is why he did not have Anderson come back later for an examination when his eyes were not dilated. Huff said he was forced to correct the illogical response found by the nurse when she gave the I-test pre-dilated. He said that he needed to address the problem stated as "some problems with shades of green mixing with other colors." Exhibit 1.

22. Huff said that Anderson told him this problem was of recent onset. Huff said he did not note the recent onset in Anderson's chart because he saw it as an inherent part of the statement already in the chart, "shades of green mixing with other colors." Exhibit 1. Huff said that he asked Anderson if he had any longstanding color vision problems. Huff said Anderson said no, that he had only a recent occurrence of shades of green mixing with other colors. Huff did not write in Anderson's chart about Anderson's lack of longstanding color vision problems.

23. At TRE nurses commonly wrote in patient charts the results of examinations, based on what the doctor said. However, Huff said he sometimes made entries and sometimes corrected nurses' entries. Huff said that he took a lot of history that nurses did not write down. He said that some information Johnson wrote was falsified.

24. Huff also said that Winter's writing that Anderson had missed all of the plates except one of those plates he was shown (thirteen plates missed) was totally inconsistent with someone who had 20/20 vision, if the test is administered by a skilled individual.

25. Huff said that based on what he perceived to be Anderson's problem he went ahead and tried to evaluate Anderson for being affected by toxic substances. He said that he was concerned about the affect of the toxic substance aspartame (Nutri-sweet) on Anderson because Anderson had told him he frequently drank diet soft drinks. Huff said that he found that Anderson has suppressed sensitivity to colors, likely because of toxic exposure.

26. When Huff administered the I-test to Anderson he said explained to Anderson that he could take as much time as he wanted on the test, that he could hold the book in any position he wanted, and that he could also take his finger and trace the numbers or images. Huff said he explained that and showed Anderson how to do it by taking his hand and showing him how to trace. Huff said that he followed Anderson through all of the plates, coaching him as he went through the book, reminding him to trace and to take his time to identify the charts. Huff said he actually helped Anderson trace one of the plates, the first plate in the I-test, by taking his finger and showing him how to trace the number and then told him to do the same on all of the other images, saying that if he could identify them without tracing that was fine, but if he could not, to take his finger and trace out the figure. Huff said that he would occasionally prompt Anderson on other figures, verbally reminding him that he could trace. Huff said that Anderson could see the image on plate number one, the one which Huff traced with him. Huff said that given enough time with verbal coaching and prompting him, Anderson could identify all of the images (numbers or patterns) on the other plates, some presenting more difficulty than others. Huff said he gave Anderson encouragement throughout the test.

27. At the conclusion of administering the I-test to Anderson, Huff wrote a note on Anderson's chart, "was able to identify all the figures once he had the exam explained to him." Then, Huff marked through the previous results for the I-test, the results listed on the chart by

Winter. All of the writing on Anderson's chart, below the red line on the first page of exhibit 1, is Huff's writing except that portion in the lower right hand corner of the chart (circled in blue ink).

28. Huff said that he was told by TRE that nurses would be the scribes for patient charts and they were the only ones who were to enter information on the chart, but when he began finding errors in what he had said or instructed, he made corrections on charts. In keeping with his policy, he said, he struck through what he said was Winter's gross error in writing the results of the I-test she gave to Anderson on December 14, 2000.

29. At the hearing, Huff agreed that if the evidence showed that he had taken Anderson's finger with his hand and traced the figures for each of the plates of the I-test found in the book, exhibit 2B, it would have been inappropriate for him to do so.

30. Huff said that there was no significant indication that Anderson's color-blindness was congenital but that there was significant indication that it was from a source other than congenital, *i.e.*, acquired color-blindness. Huff said that this was evident from Anderson's presentation of the problem, seeing shades of green mixing with other colors, of recent onset. Huff said that a person who has missed all of the plates on an I-test, which shows complete color-blindness, has visual acuity limited to 20/200 or less, but Anderson could see 20/20 uncorrected. Huff said that Anderson told him that he had no difficulty distinguishing between the colors green, red, and amber.

31. Huff said he did not give the I-test to Anderson to determine congenital color-blindness, but to evaluate acquired color-blindness, because it was the only test TRE had to do such an evaluation. He used the I-test not as a pass/fail test but as a diagnostic tool to evaluate Anderson.

32. Huff's diagnosis was that Anderson's graded color deficiencies were consistent with this complaint of shades of green mixing with other colors, that it was partial, and that given

enough time Anderson could see the images and distinguish shades of green and other colors. Huff said that Anderson was a typical individual who has been exposed to toxic substances that have effected him optically.

33. The rules of the I-test are rules for determining congenital color-blindness. Huff used the test for evaluation not in accordance with the I-test rules. Huff said there is not set of rules for use of the I-test as he used it. Huff said he relied on his training and experience.

34. Huff said he had no reason to falsify Anderson's I-test and did not do so on December 14, 2000.

35. Neither Montana nor North Dakota have anything on their eye exam licensing forms relating to color-blindness or partial colorblindness. There is no requirement of a color vision test. Exhibit 3. Anderson brought no forms for Huff to complete when he came to TRE on December 14, 2000.

36. After Anderson's examination, Huff wrote to Dr. Andrzejewski reporting the results of his examination. Exhibit 1, page 3, December 18, 2000, letter, and page 4, December 14, 2000 note.

37. Sandy Winter is an LPN at TRE. She is certified as an ophthalmic assistant and an optometric assistant. She has experience over the years in giving the I-test and has been trained to do it. Winter did not know that the I-test is designed to be given to people who are congenitally color-blind.

38. Winter checked Anderson in at TRE on December 14, 2000. She said that Anderson said he was at TRE for a trucking physical. She said that he told her his problem, which she recorded. She then tested him as indicated on Anderson's chart. She gave him the I-test. She said that she explained the I-test to him and then with an occluder had him look one eye at a time at the book, at each of the plates in order. Exhibit 2B. Anderson correctly identified

plate numbers 1 and 9 with either eye. She said that Anderson had difficulty with all of the other plates frequently saying that he could not see anything. Winter said that she did not hurry him. She said that he had adequate lighting. She said Anderson's I-test took about 6-7 minutes. After the I-test, Winter dilated Anderson's eyes. Winter testified that she was following standard operating procedure at TRE when she checked in Anderson and prepared him for seeing Huff. She said that she did the I-test and dilated Anderson's eyes as a time saver for Huff. She said that after a patient's eyes are dilated they would likely have more difficulty with the I-test, in distinguishing colors.

39. Winter said that Anderson brought no paperwork or forms with him to TRE that day. She said she got no information from Dr. Andrzejewski about for what Anderson was to be examined. Winter had no prior knowledge that Anderson had eye problems with color. This was Anderson's first eye examination at TRE.

40. Winter was very angry and upset with Dr. Huff after he examined and evaluated Anderson and she went with Johnson to see the TRE administrator about Huff. See FOF 49, below.

41. Marlene Johnson is a certified ophthalmic assistant and certified optician at TRE. She also has a four year criminal justice degree.

42. When she first saw him, Anderson told Johnson that he was nervous about getting an eye examination because he knows he is colorblind and he was worried about passing and getting his trucker's license.

43. Johnson was with Huff when he began examining Anderson. She watched Huff examine Anderson and give him some tests. She watched Huff give Anderson the I-test. Johnson said that there was adequate lighting in the room and Anderson had the test book (exhibit 2B) in his lap when he took the I-test.

44. Johnson said that after Anderson told Huff that he could not see most of the figures, Huff helped Anderson by taking his hand and helping him physically trace the figures, encouraging him and coaching him as they went. Johnson said that Anderson did not trace any of the figures on his own. Even then, she said, Anderson was having trouble and several times said he couldn't see the figures, but Huff encouraged him by saying, "can't you feel the figure." Again, Johnson said that Huff continually tried to help Anderson by physically helping him trace and by coaching and encouraging him.

45. Johnson said she wrote into Anderson's chart what Huff told her to write (circled blue information). Exhibit 1, page 1.

46. Johnson said that Huff's statement on Anderson's chart about the I-test was not honest.

47. After Johnson testified, Huff denied tracing with Anderson's finger on more than one plate. Huff said that if the I-test would have been given with him holding Anderson's finger and helping him trace on every figure of the I-test, that would be inappropriate, unprofessional, and gross negligence. Huff said he "can not imagine it being done."

48. Huff asked Johnson to write a small note to Dr. Andrzejewski about Anderson passing the I-test. She did this. Exhibit 1, page 4.

49. Johnson said she was "pretty hot" that day because of what happened with Huff and Anderson. She said Anderson was confused when he left TRE. She said she went with Winter to see the TRE administrator, telling her about Huff's actions with Anderson. She said that she had never before see anyone do what Huff did with Anderson. Johnson said that she believed at the time of Anderson's examination in 2000, that Anderson had partial congenital red/green color blindness.

50. Huff arranged for Anderson to meet with a Dr. Farris, a neuro-ophthalmologist, an optic neuropathy specialist, in Oklahoma. Anderson was working in Oklahoma in 2003. See exhibits 5-7.

51. After Dr. Farris examined Anderson, he sent Huff a letter stating his findings. Exhibit 5, February 21, 2003, letter.

52. After Huff received the Farris letter, Huff said he did not disagree with Dr. Farris, but he said Dr. Farris was operating from a base of information that was incomplete. Huff then sent a letter to Dr. Farris providing him more information. Exhibit 7, March 2, 2003, fax transmission.

53. Dr. Farris then wrote back to Huff again. Exhibit 6, March 3, 2003, letter.

54. After examining Anderson and giving him the I-test, Dr. Farris concluded that Anderson had congenital red/green color blindness. Exhibit 5. Dr. Farris said that he did not feel that Anderson showed any evidence of toxic optic neuropathy at the time he examined him, on February 21, 2003. Exhibit 6. In response to Huff's letter, exhibit 7, Dr. Farris said that he has "commonly allowed patients to trace numbers with their hands." Exhibit 6. Dr. Farris also said that he did not "disagree with ... [Huff's] approach at the time that ... [Huff] saw him in regards to wanting to rule out ... [a toxic type of visual loss] possibility with color vision testing." Exhibit 6.

55. Anderson testified at the hearing via telephone from Oklahoma. Anderson said he was getting the eye examination in 2000 because of a job application. He said he was applying for the job of a "crane swamper" on oil rigs. He said that job involved some driving. He said that another doctor noticed a problem with his eyes and sent him to TRE.

56. Anderson said that he had much difficulty with the first test given by Winter. He said that he had the same amount of difficulty taking the test given by Huff.

57. Anderson said that Huff assisted him at the beginning of the test. He said that Huff took his finger with Huff's hand and traced figures during the test, more than three times. He said that if he did any figures without physical assistance from Huff it was after a long while. He said that he could do the test after Huff showed him by tracing with him.

58. Anderson said that he never told Huff or the nurse that he had trouble with the color green or distinguishing shades of green. He said that he did not know at the time that red or green colors were going to give him a problem. He said that he did not know this until he took the test. He said he told Huff that he had no problem seeing red and green lights. Anderson said that he had problems with the I-test given to him not because he was nervous but because he was color blind.

EVALUATION OF THE EVIDENCE

Many of the findings of fact contain language indicating that someone said something. Later in the findings of fact, someone may say something different about the same situation and circumstances. Ordinarily, such statements would not be considered findings of fact but, rather, statements of fact. As indicated, no physician testified as an expert for Investigative Panel B. Thus, Huff was the only physician to testify. Two nurses testified and there is documentary evidence from Dr. Farris. Yet, much of Huff's testimony was neither contradicted nor further explained by another physician. Therefore, it seemed better in this decision to set forth the findings of fact as both findings of fact and statements of fact to give the matter some context, and to indicate from whom the statement (finding) came. In this decision, statements of fact should only be considered findings of fact if they are not contradicted by other statements of fact. Contradictions to some of Huff's statements did come from the two nurses, from Anderson, and from Dr. Farris, but primarily in regard to the eye examination of Anderson. These

contradictions are explained in this section, the evaluation indicating which contradicted statements of fact are to be believed.

The evidence shows that Winter gave Anderson an I-test in 2000 and Anderson identified only two plates correct (the given plates) with each eye, separately. Huff gave Anderson an I-test in 2000, after dilation, and Anderson identified all of the plates with, at the very least, coaching, with both eyes. There is conflicting evidence about whether Huff helped Anderson on more than one plate by actually placing his hand on Anderson's hand and tracing figures with him. Farris gave Anderson an I-test in 2003 and Anderson identified 6 plates with one eye and 6.5 plates with the other eye (plus the given plates).

The ALJ chooses to believe the evidence of Anderson which was supported by the evidence of Johnson and Farris. There is no doubt, based on that evidence, that Huff did give the I-test to Anderson when he was dilated and that he actually helped Anderson with the I-test by taking Anderson's finger with his hand and tracing the numbers and figures on the I-test with him. Huff traced with Anderson's hand more than once, probably more than three times.

Huff crossed out Winter's findings of the I-test she gave Anderson and then wrote that Anderson "was able to identify all the figures once he had the examination explained to him." Exhibit 1.

Huff did not appropriately conduct the I-test. Huff deceptively wrote that Anderson was able to identify all the figures of the I-test, implying that he passed the test. In fact, when Huff initially wrote a note to Dr. Andrzejewski he implied the same. Exhibit 1, page 4. When Huff later wrote to Dr. Andrzejewski about Anderson he specifically said that "once the patient had the test explained to him he was able to identify all of the plats [sic] with no difficulty... [m]y impression is a normal color test, a normal eye exam and an excellent candidate for his truck-driving license." Exhibit 1, page 3.

In fact, Dr. Farris found that Anderson had congenital red/green color blindness, *i.e.*, partial, congenital color blindness. Dr. Farris said that Huff appropriately looked for toxic optic neuropathy in Anderson. However, Dr. Farris in no way said that he agreed that Anderson suffered from toxic optic neuropathy.

The evidence shows, by the greater weight of the evidence, that Huff's actions in crossing out Winter's failed I-test results on Anderson's medical chart, writing something different, and then, in effect, writing to Dr. Andrzejewski that Anderson had passed the I-test, under the circumstances, is dishonorable, unethical and unprofessional conduct likely to deceive, defraud or harm the public, and further, was gross negligence. Huff acknowledged that if he did what is alleged he did violate the law as alleged. The evidence shows he did what was alleged. In the face of two contrary witnesses, Huff continues to deny that he actually held Anderson's finger with his hand and helped him to trace figures on the I-test. Huff is not to be believed.

There is some motivation for Huff and the two nurses who testified against him to at least shade the truth, but the ALJ is aware of no motivation for Anderson to lie in testifying against Huff. Anderson's testimony coupled with Johnson's testimony, supported to some extent by Winter's testimony, and supported by Dr. Farris's evidence, shows that Huff either does not recall what happened accurately and is sticking with his story regardless, or that he is trying to cover up, after the fact. Regardless of the apparent lack of motivation for Huff to falsify an eye-exam for Anderson, it is apparent that Huff, for whatever reason, did falsify that exam. He apparently acted as he did for some purpose or reason. Perhaps it had to do with the friction between him and the staff of TRE. Perhaps it had to do with his theory of practice and his bent towards finding a diagnosis that could be dealt with by holistic measures. The evidence does not show what Huff's motive is in the first instance, if any, but it does show that he has since steadfastly tried to cover-up or obscure the circumstances of what really happened. What really happened is that he

violated the law, though, it appears, he did not have any intent to cause harm or injure the public or anyone else by his actions.

Finally, as a result of this hearing, the ALJ should note that he does not see Huff as a bad person or a bad physician. Rather, he sees someone who is committed to his theory of practice, resolute, and unwilling to admit that he is wrong. Someone like Huff, due to the fact that these allegations were brought against him over one year after the events that resulted in the Complaint occurred, might refuse to admit that he was wrong. Memories are not as good after the passage of time. Perhaps one is less likely to remember or believe that he is wrong when something he has done goes unchallenged for a rather long period of time.

CONCLUSIONS OF LAW

1. Huff is currently a physician licensed to practice in North Dakota under the provisions of N.D.C.C. ch. 43-17.
2. The evidence shows, by the greater weight of the evidence, that Huff violated the provisions of N.D.C.C. § 43-17-31 (15) and (16) by his actions on December 14, 2000, in that he inappropriately aided a patient on the Ishihara Test, crossed out a nurses recording showing the patient failed the test, wrote a statement on the patient's record indicating that the patient had passed the test, and wrote to another physician indicating that the patient had passed the test, identifying all of the plates, when the patient did not identify all of the plates except with help by Huff that was inappropriate. Such actions were dishonorable, unethical, and unprofessional and likely to deceive, defraud, or harm the public, in violation of N.D.C.C. § 43-17-31 (16), and were gross negligence in the practice of medicine within the meaning of N.D.C.C. § 43-17-31 (15).

3. The Board has authority under N.D.C.C. § 43-17-30.1 to take various disciplinary action against Huff for violations of N.D.C.C. § 43-17-31 as proven, including revocation or suspension of license, and payment of a fine of up to five thousand dollars.

4. The Board has authority under N.D.C.C. § 43-17-31.1 to direct a physician who has disciplinary action imposed against him for violations of law, to pay to the Board a sum not to exceed the reasonable and actual costs, including reasonable attorney's fees, incurred by the Board and its investigative panel in the investigation and prosecution of the case.

RECOMMENDED ORDER

The greater weight of the evidence shows that Huff violated the provisions of law as alleged in the Complaint and as stated in the Conclusions of Law. At the close of the hearing counsel for Investigative Panel B recommended that Huff be suspended for a period of one year, that he pay a fine of two thousand dollars, that he attend an ethics course of the Board's choosing, that he not be reinstated to licensure until the fine is paid and the ethics course is attended, and that he pay all of the costs of investigating and prosecuting this action. The ALJ recommends that the Board order Huff suspended for one year from the practice of medicine in North Dakota, but that none of the suspension actually be invoked, provided that Huff pay a two thousand dollar fine, attend an ethics course of the Board's choosing, and pay all of the costs of investigating and prosecuting this action, all three to be accomplished within one year from the date of the issuance of Board's final order in this matter.

Dated at Bismarck, North Dakota, this 8th day of September, 2003.

State of North Dakota
Board of Medical Examiners

By: _____
Allen C. Hoberg
Administrative Law Judge
Office of Administrative Hearings
1707 North 9th Street
Bismarck, North Dakota 58501-1882
Telephone: (701) 328-3260